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Wyclif on Rights

Stephen E. Lahey

In the study of medieval political philosophy the tendency has been to pay attention to thinkers who appear to have contributed to the birth of the modern. While the value in coming to understand how modern political thought developed is undeniable, this tendency is accompanied by an implicit, perhaps unintentional, devaluation of the study of that which did not contribute as obviously to modernity. In the history of the idea of the natural right scholars have distinguished between the objective and the subjective right, characterizing the subjective right as what lies at the heart of the classically modern and liberal. One could get the impression that the good political philosophers, having hit upon the subjective right, dispensed with talk of the old-fashioned objective right just as people abandoned gaslight when Edison's lightbulb went on the market.¹ But this is not what happened; not only did objective rights discourse continue into the modern period, but it was not necessarily the idiom solely of religious and political conservatives.

Some late medieval philosophers, notably Marsilius of Padua, even came up with progressive and unorthodox political visions while adhering to the objective right. I will show that at least one late medieval political theory founded on the objective right, that of John Wyclif, can be argued to be as innovative in several important aspects as that of any of the better-known fourteenth-century advocates of the subjective right. To do that, I will divide this paper into three parts. In the first, I will explain the difference between objective and subjective theories of the right, making note of what we can reasonably expect from a fourteenth-century political theory in the way of toleration and briefly introducing John Wyclif's life and works. In the second I will recount Wyclif's view of *ius*, or the right, as it appears in his political writings, and in the third I will explain how this concept has a bearing on elements in his political thought that are recognizably unorthodox and even tolerant to modern, liberal eyes. Having

¹ See Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1979), and Quentin Skinner, *Foundations of Modern Political Thought* (Cambridge, 1978).

shown how Wyclif's objective right plays out in his innovative and reformatory political scheme, I hope to have helped to dispel the dogma that the only early rights theories worth studying are those that evolved into ones we use.

I.a. Objective and Subjective Rights

The explicit distinction between objective and subjective rights is a new one, invented by scholars of the history of political thought to distinguish between the sense of the term *ius*, or right, as that which is just in accordance with a set body of law, and the sense of *ius* which refers to a licit power or faculty belonging to an individual in accordance with right reason.² The objective right is grounded in Roman law and functioned in medieval legal and political thought as it had in antiquity. Generally, an individual had a *ius* to act or be acted upon if that action was commensurate with the law. Among the Romans, that law was either Roman law, or it was according to objective natural law; with the introduction of Christian monotheism, the *ius* was "right" according to God's law. Tuck notes that the concept of *dominium* had long been of a piece with objective *ius* and explains that *dominium* had usually been seen as a species of objective *ius*. If someone has just *dominium* over something, it is because their relation of *dominium* is "(what is) right," *ius*, in accord with justice, *iustitia*. He argues that when *dominium*, which he understands to mean "property," is equated with *ius*, "right," the foundation is laid for a possessive (subjective) right.³ While this is problematic on several counts, not the least of which is the restriction of *dominium* to the ownership of property, it illustrates the relatedness of the two concepts *ius* and *dominium*.⁴

As juristic sophistication grew in the twelfth century, it became useful to distinguish between *ius in re*, "right in a thing," and *ius ad rem*, "right to a thing." If someone has a *ius in re*, they can use the thing and/or exercise *dominium* over it justly without answering to anyone (save God). If someone has a *ius ad rem*, they have a claim to the thing, but they do not exercise *dominium* over it; they rely on the present *dominus* to fulfill their claim.⁵ This is not to say that *ius in re* was seen as a "right to *dominium*, for the jurists held that *dominium* was a species of *ius*, allowing for there to be non-dominative *iura in re*."⁶

² See Brian Tierney, "Origins of Natural Rights Language: Texts and Contexts, 1150-1250," *History of Political Thought*, 10 (1989), 615-46, and "Marsilius on Rights," *JHI*, 52 (1991), 3-17.

³ Tuck, 3.

⁴ See Tierney, "Tuck on Rights: Some Medieval Problems," *History of Political Thought*, 4 (1983), 429-41.

⁵ Tuck, 14-15.

⁶ See J. H. Burns, *Lordship, Kingship, and Empire* (Oxford, 1992).

The subjective *ius* is a different matter. In early modernity legal philosophers usually distinguished them from objective rights by referring to something within the right-holder. Tierney notes that Grotius (c. 1625) describes objective rights in the usual fashion, “The word could mean ‘what is just’ (the preferred definition of Aquinas), or it could mean a kind of law, and in that sense *ius naturale* was a ‘dictate of reason.’ ” But subjective rights were something different, “ ‘a moral quality of a person enabling one to have or do something justly.’ ”⁷

This is something like a faculty—including power over oneself—a liberty, or a claim one could make on other things or people. A. S. McGrade defines a subjective right as “an individual’s legally recognized power or freedom with respect to some good.”⁸ Subjective rights had begun to appear as early as the twelfth century, although it was the later thought of Ockham and Gerson that proved to be directly influential to the early modern thinkers.⁹ Tierney has noted that while neither Gerson nor Ockham described a twofold definition of *ius* as objective law and subjective right, Marsilius did make such a distinction in his definition in *Defensor Pacis* II.12.10.¹⁰ Although the purpose of Marsilius’s distinction was to argue that an absence of subjective rights was the identifying mark of true Christian ministry, that he made the distinction is significant.¹¹

I.b. “Progressive” Medieval Political Thought?

A still-common view is that the medieval views of toleration and progressivity were what early modern, classically liberal thinkers were reacting against. If we define toleration as willingness to allow the continued existence (if not flourishing) of ways of life differing from a prevalent standard and define progressivity as a political tendency towards the elimination of inequities in the distribution of goods or power, so the story goes, we are unlikely to find either in medieval visions of social order. Further, so long as the centralized, hierarchical structure of medieval papalism monopolized the society’s religion,

⁷ Tierney refers to Grotius, *De Iure Belli et Pacis* (1989), I, 1.4, 2, 621-22.

⁸ A. S. McGrade, “Rights, Natural Rights, and the Philosophy of Law,” in N. Kretzmann, Jan Pinborg, A. Kenny (eds.), *The Cambridge History of Later Medieval Philosophy* (Cambridge, 1982), 742, n.32.

⁹ See A. S. McGrade, *The Political Thought of William of Ockham* (Cambridge, 1974). See also Janet Coleman, “Medieval Discussions of Property: *Ratio* and *Dominium* in Thirteenth and Fourteenth-Century Political Thought and Its Seventeenth-Century Heirs,” *Political Studies*, 33 (1985), 73-100, and A. S. McGrade, “Aristotle’s Place in the History of Natural Rights,” *Review of Metaphysics*, 49 (1996), 803-29.

¹⁰ Tierney, “Marsilius on Rights,” 5. See also Cary Nederman, *Community and Consent: The Secular Political Theory of Marsiglio of Padua’s Defensor Pacis* (Lanham, Md., 1995), 34-35.

¹¹ See *Defensor Pacis*, II, 14.6-14; II 12.13; II.13.9-10.

social change could only take place with the cooperation of priests for whom toleration or social progressivity represented a threat to their maintenance of power. Once the papal structure began to totter in the Protestant Reformation, the stage was set for the onset of modern theories of tolerance of diversity and for the eventual demise of the feudal class structure.

A generation of scholars of medieval political theory have unmasked this fiction.¹² Usually this case is made with thinkers who used the subjective natural right, like Marsilius or Ockham, for whom the identification of church and state was to be avoided. A medieval social vision founded on an objective view of right characterized by a similarly unorthodox rejection of mechanisms like feudalism and priestly hegemony would be a noteworthy instance of modern values turning up in medieval garb.

On the political level, John Wyclif advocates two social classes—property owners (including those who use what others own) and those who live in apostolic poverty, owning nothing privately. He believes the duty of the just civil lord or king is to see that the apostolically poor, who are all members of the church, are supplied with alms necessary for acquiring the goods they share, and to protect their pure poverty. The king's duty is also to ensure that society's civil owners can live harmoniously together and with the apostolically poor, free from any threats. The co-existence of these two classes under the protection of the king suggests an attitude of toleration towards property ownership, which Wyclif believes to be founded in Original Sin. Further, his doctrine of Grace-founded *dominium* requires the king to serve as moral exemplar for his subjects, to refrain from war for any reason but strictly defined defense of the realm, and to keep the nation's laws and taxes to a bare minimum. And given the still common social strictures of feudalism, Wyclif's argument that no civil *dominium*, including both property ownership and civil jurisdiction, can be granted in perpetuity overturns established feudal machinery.

Wyclif's theology is remarkably anti-authoritarian. His attitude towards the standing ecclesiastical hierarchy is openly hostile, and he consistently holds that the only clerical concerns should be the spiritual welfare of the laity, that interest in material gain is evidence of unsuitability for the priesthood. In late fourteenth-century England the church controlled enough land, natural resources,

¹² See also Anthony Black, "Society and the Individual from the Middle Ages to Rousseau: Philosophy, Jurisprudence, and Constitutional Theory," *History of Political Thought*, 1 (Summer, 1980), 145-66; James Blythe, *Ideal Government and the Mixed Constitution in the Middle Ages* (Princeton, 1992); Alan Gewirth, "Philosophy and Political Thought in the Fourteenth Century," *The Forward Movement of the Fourteenth Century* (Columbus, 1961), 125-64; David Luscombe, "The State of Nature and the Origin of the State," *Cambridge History of Later Medieval Philosophy*; Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought 1150-1650* (Cambridge, 1982). For premodern notions of toleration, see Cary Nederman and John C. Laursen, *The Roots of Toleration in Europe, 1100-1700: Theory and Practice* (Lanham, Md., 1997).

and bare political power for Wyclif's view to be truly incendiary. He also argues that excommunication should never be an option for controlling church members, that Scripture must be available for clergy and laity alike, and that episcopal power be subordinate to the king, not the pope.

Is Wyclif's theory as tolerant as the better known Ockham or Marsilius? He rejects the idea that the consent of the governed has anything to do with the justice of the government,¹³ speaks not at all of parliament and views a community of aristocrats as a bad source of civil legislation,¹⁴ advocates suffering tyranny as a kind of general divine punishment so long as the tyrant does not unduly injure the church,¹⁵ and makes no bones about the church being a significant part of the state.¹⁶ On the face of it, fourteenth-century advocates of subjective natural right seem to deserve the praise for separation of church and state. But this does not mean that an advocate of objective right like Wyclif is without innovations and in the third section of this paper we will examine elements of secular and theological progressivity in light of his concept of objective *ius*.

I.c. John Wyclif's Life and Works

Had Wyclif remained where he was in 1373, history would remember him as among the last of the Oxford schoolmen, a Master of Balliol college and philosophically one of the most articulate opponents of the *Moderni* conceptualist ontology.¹⁷ Indeed, the recent edition of his *De Universalibus* of 1368-69 reveals a satisfyingly sophisticated philosophical realism.¹⁸ But in 1374 Wyclif decided that it was time to turn from theoretical pursuits, and he began his politically and ecclesiastically reformatory *Summa Theologie*.¹⁹ This *Summa* was to launch a firestorm of controversy, initially involving Gregory XI, Urban VI, and John of Gaunt over Wyclif's fierce anti-papalism, which came to a head in controversial trials and eventually led to the heretical Lollard.

Our interest lies in the first books of the *Summa*, where Wyclif describes the relation of God to creation, the Fall, and the optimum conditions for

¹³ *De Civili Dominio* [henceforth, *DCD*], I, xviii, p. 130. 6-14.

¹⁴ *Ibid.*, I, xxviii.

¹⁵ *Ibid.*, I, vi, 43; xxviii; *De Officio Regis* [henceforth, *DOR*], i, ii, iii, 52, viii, 201.

¹⁶ *DCD*, I, xxviii; *DOR*, ii, vii.

¹⁷ See H. B. Workman's *John Wyclif: A Study of the English Church* (Oxford, 1926). See also J. A. Robson, *Wyclif and the Oxford Schools* (Cambridge, 1966); Anne Hudson and Michael Wilks (eds.), *From Ockham to Wyclif: Studies in Church History, Subsidia*, 5 (London, 1987); and William J. Courtenay, *Schools and Scholars in Fourteenth-Century England* (Princeton, 1987).

¹⁸ John Wyclif, *Tractatus de Universalibus*, ed. Ivan J. Mueller (Oxford, 1985); *On Universals*, tr. Anthony Kenny (Oxford, 1985).

¹⁹ *De Dominio Divino* [henceforth, *DD*], I, incipit, 1.6: "[T]empus mihi per totum residuum vite mee tam speculative quam practice, secundum mensuram quam Deus donaverit...."

postlapsarian humans. In *De Dominio Divino* Wyclif characterizes the relation of God to creation in terms of *dominium*, a portmanteau word which incorporates the concepts of ownership and jurisdiction.²⁰ Wyclif explains that God's *dominium* is the first, unmediated cause of all instances of created *dominium* and describes divine *dominium* as paradigmatic in its nutritive love (*caritas*) of its subjects.²¹ He further defines God's *dominium* as involving the truest kind of ownership; humans who have been given *dominium* in creation cannot lay claim to such a perfect relation.²²

Wyclif explores human *dominium* in *De Statu Innocencie* (1376), which gives a picture of the idyllic natural human *dominium* in Eden, and in *De Civili Dominio* (1376-77), which explains how just postlapsarian human *dominium* is possible. In both Wyclif contends that all human *dominium* is really on loan from God and that true human lords exercise this relation in and through a Grace-given *caritas* otherwise impossible for postlapsarian wills.²³

Wyclif believes that Grace is absolutely necessary for human lords to be just; without it the civil lord would become enmeshed in the worries consequent on ownership, inevitably lapsing into tyranny. Because a lord's jurisdictional authority is only possible through Grace, it follows that human justice is only possible when civil law is grounded in divine law.²⁴ Yet Wyclif believes private property ownership to be an abomination, and that any institution founded upon it cannot possibly partake of God's justice.²⁵ The *dominium* with which humans were created involved no "mine" and "thine" and was the relation meant to allow human participation in God's loving *dominium* over creation.²⁶ Since this natural *dominium* was lost with the Fall, Wyclif might have argued that civil *dominium* can admit of Grace as a kind of substitute for the lost ideal. Rather, Wyclif believes that the Edenic natural *dominium* can be regained through Christ's redemption of Original Sin, and that all those favored by Grace are freed from the anxieties of private ownership.²⁷ These Grace-favored natural lords, he explains, are the true members of the church, and deserve to be protected from the hazards of post-lapsarian life by someone sufficiently powerful to overcome any threat.

²⁰ For dating Wyclif's writings, see Williel R. Thomson, *The Latin Writings of John Wyclif* (Toronto, 1983).

²¹ *DD*, I, iii-vi.

²² *Ibid.*, I, ii, 11.24ff.; I, x, 65.13-75.32.

²³ *De Statu Innocencie*, vi; *DCD*, I, iv; III, xv.

²⁴ *DCD*, I, i, 1.1-3: "Ius divinum presupponitur iuri civili; Dominium naturale presupponitur dominio civili." See also Michael Wilks, "Predestination, Property, and Power: Wyclif's Theory of Dominion and Grace," *Studies in Church History*, II (London, 1965), 220-36.

²⁵ *DCD*, I, xxii, 155.17.

²⁶ *DD*, I, iii; *De Statu Innocencie*, vi; *DCD*, III, xiii.

²⁷ *DCD*, I, ix; III, i-xiii.

This is the place of the Grace-favored civil lord; he is qualified by Grace to enjoy restored natural *dominium* but must shoulder the responsibility of civil *dominium* on behalf of his fellows.²⁸ Thus, a Grace-favored civil lord is necessary for the protection of the church and is enabled by Grace to recognize that his office is really one of stewardship on behalf of the divine lord and not truly jurisdictional ownership.²⁹

The church must submit to the Grace-favored civil lord's regulation as a patient submits to a physician. When the patient struggles, the physician does not quail but rather persists even if the patient believes the physician to be engaged in murder.³⁰ The civil lord must serve as material vicar in the church, with full temporal powers over the kingdom. This amounts to a complete divestment of all of the church's material holdings, which would be disastrous were the civil lord not always conscious that he is only God's steward.³¹

As mentioned, the outcome of this reformatory prescription for society is two classes: the property-holding majority, including all who implicitly show their approval of *proprietates* through their use of private property, and the apostolically poor minority, who rely on the king for their material needs. The property-holding majority are not members of Christ's body on earth by virtue of their willingness to own property, and are damned, while the apostolically poor minority are those whom God foreknows to be saved. The civil lord or king is of this latter group and serves as the kingdom's shepherd and steward, caring for the saved and the damned alike. This is the general outline of Wyclif's social vision, from which flows his rejection of the feudal order, his condemnation of church-owned private property, and all that we will discuss below.³²

II. Wyclif on Rights

While the ideal relation of Church and State in *De Civili Dominio* is described in terms of Grace-founded *dominium*, the idea's roots lie in the rights theory Wyclif had already outlined in *De Mandatis Divinis*. Willielm R. Thomson dates the treatise, the first in Wyclif's *Summa Theologie*, at 1375 or early 1376. Here Wyclif set out to show humans how to realize God's will for their actions, beginning with a consideration of *ius* and *iustitia* as it is knowable by hu-

²⁸ *Ibid.*, I, xvii; xviii, 129; xxxviii, 265.29-266.4; see also *DOR*, x.

²⁹ *DD*, III, vi; *DCD*, I, xi; I, xxxvi; See also A.S. McGrade, "Somersaulting Sovereignty: a Note on Reciprocal Lordship and Servitude in Wyclif," in Diana Wood (ed.), *The Church and Sovereignty, Studies in Church History, Subsidia*, 9 (London, 1991), 261-68.

³⁰ *DCD*, I, xxxvii, 272-74.

³¹ *DCD*, I, xi, 75; xxxiii, 231; xxxvi, 259; *DOR*, iv, 79.

³² Wyclif can be construed as allowing for the righteousness of other property owners in *DCD*, III, vii-viii, where he argues that one's poverty in spirit is more important than one's poverty in ownership.

mans.³³ Holding that Holy Scriptures are the most direct source of God's will for human action, he directs most of the treatise to an exegesis of the Decalogue.³⁴ My attention will be focused on Wyclif's explanation of why the nature of the right is found in Scripture and what its implications are for his rights language.

At the outset of *De Mandatis Divinis* Wyclif explains that *ius* is a term used when something is just.³⁵ To show that *iustitia* is an effect of being in accord with *ius*, Wyclif suggests we look at the three senses of the term *ius*. First, it is used to describe any real created nature justly exercised over a subject (*servum*), including the use of something/someone. Second, it is used to describe the power of a lord to use something/someone (a right of use). Finally, it is used to refer to the uncreated truth paradigmatic for all *iustitia*, "which some call the art of the fair and the good, and some a holy sanction, which commands the upright and forbids the opposite, but some more completely say that *ius* is the constant and perpetual will granting to each what is their own."³⁶

Some have used this last definition of *iustitia*, but incorrectly. We should recognize that *iustitia* is an effect of *ius*, for the only thing prior to *iustitia* according to the jurist's definition is the constant will to give to everyone their due. Can this constant will be anything other than *ius*? Here Wyclif is extrapolating from Justinian's *Institutes*, where in the first sentence the emperor begins with the working Roman definition of *iustitia* just given.³⁷ Perhaps Wyclif is reasoning that if created *iustitia* is founded in a constant human will, the uncreated and purer divine *iustitia* must be founded in the divine will. If so and if one reads Justinian's definition "constans et perpetua voluntas ius suum cuique tribuens" as presupposing a *ius* which is each person's due, it seems natural to conclude that God knows as he wills what is each person's due, which would make what is *ius* at least contemporaneous with divine willing and certainly prior to the *iustitia* consequent on perfect willing.

Iustitia, Wyclif explains, is usually defined as a moral virtue, a habit; and because the divine will is not a habit but a person of the Trinity, *ius* must be prior to and causative of *iustitia*.³⁸ This is not to say that Wyclif embraces the Aristotelian definition of *iustitia* but rather that the Aristotelians are wrong to

³³ *De Mandatis Divinis* (henceforth, *DMD*), I, 1.1-7.

³⁴ *DMD*, III, 21.13-25.

³⁵ *DMD*, I, 8-10.

³⁶ *Ibid.*, 1.13-2.6: "Et tercio accipitur ius pro veritate increata omnem creatam iusticiam exemplante; quam quidam vocant artem equi et boni; et quidam dicunt quod est sanccio sancta, precipiens honesta et prohibens contraria; sed quidam dicunt complecius quod ius est constans et perpetua voluntas tribuens unicuique quod est suum."

³⁷ Justinian, *Corpus Iuris Civilis, Vol. I, Institutiones*, I.i.1: "Iustitia est constans et perpetua voluntas ius suum cuique tribuens. Iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia."

³⁸ *Ibid.*, 2.7-16.

suppose that their version of *iustitia* could possibly be directive of uncreated *ius*.

All created justice is a virtue of a rational creature, but no creature subjects any other through power to give up his right, so this description does not match created justice; indeed, if any justice matches, it would be uncreated justice, in which coincide right, the just, and pure justice. This, then, is the order: the virtue of justice is founded in the rational creature by right, which is the simplest and first rule, which right is just *formaliter*. And by ... [this objective right] the works of humans are just, thus a human work is just by justice, as justice [is just] by right.³⁹

One might wonder why, if in God the just, the right, and justice are identical, created justice would be causally dependent on the uncreated right. Why not on uncreated justice? Wyclif has made it clear that all that is just in creation happens because God wills it.⁴⁰ While what happens is just, that it happens is right. Since God knows and wills that it happen, which knowing and willing is the uncreated “right,” the acting that is taking place is just but that the action occur is right.⁴¹

It is not surprising that Wyclif makes the argument that all created standards of the right are as nothing in comparison to uncreated right, given his description of God’s all-encompassing *dominium* in *De Dominio Divino*. What is remarkable is his reference to *ius* as the just exercise of authority over or use of something/someone and also as the power of *dominium* or use. This suggests in one case a diversion from the objective right as it appears in Aquinas and in the other a potential sensitivity to the idea of the subjective *ius*, which is described by Marsilius as an act, power or habit.⁴²

Can we not explain both of these references as to traditional objective *ius*? Regarding the first sense, a created truth justly exercised over a subject, one could make the argument that this is in accord with Aquinas’s description of *ius* or *iustum* as “commensurate with another person according to some sense of

³⁹ *Ibid.*, 2.17-3.2: “Item, omnis creata iusticia est virtus creature rationalis, sed nullius creature potestati subiacet unicuique ius suum tribuere; ergo dicta descriptio non competit create iusticie; immo si alicui iusticie conveniat, hoc erit iusticie increate, in qua ius, iustum atque iusticia mere coincidunt; et per consequens dicta descriptio iuri primo convenit. Iste ergo erit ordo: a iure, quod est simplicissima ac prima regula, infunditur creature rationali virtus iusticie, qua ipsa est iusta formaliter. Et ab hiis simul dicitur denominatione extrinseca opus hominis esse iustum, sic quod opus humanum fit iustum a iusticia, sicut iusticia fit a iure.”

⁴⁰ *DD*, I, x, 74.5ff.

⁴¹ *DMD*, I, 4.15-5.2. Cf. Thomas Aquinas, *Summa Theologiae*, IIaIIae, 57.1.

⁴² See *Defensor Pacis*, II.12, 10; see also Tierney, “Marsilius on Rights,” 5.

fairness.”⁴³ But we should be clear about what sort of “created truth” is being justly exercised; the use of the term *servum* suggests *dominium*. Aquinas describes the *dominium* relation as being a special sort of *ius*, like the parental *ius*. He says that the dominative *ius* detracts from the *ius* and *iustum* of the lord and the servant.

A child precisely as such belongs to the father, and a slave precisely as such belongs to the master. All the same, each, taken as an individual human being, subsists in himself and distinct from others. Each accordingly is an object of justice in some manner, inasmuch as each is a human being. Accordingly, laws are laid down regulating the dealings of father and child, and of master and slave. But to the extent that each belongs to another the full character of the right and the just is lacking.⁴⁴

The only way to claim that Wyclif’s first description of *ius* is in reference to Aquinas’s definition of objective right would be to hold that Wyclif saw *ius* as exclusively dominative, a bastardization of Aquinas’s theory. Better to interpret this first description as a state of affairs between the holder and that/those over which the relation is held that has its “rightness” by virtue of its being exercised justly. Wyclif’s reference to justice as a habit could correspond to this description; were someone to ask how the relation could be exercised justly, the response would be that the *ius* came from the practice of the moral virtue of justice on the part of the holder.

But Wyclif has already argued that justice is founded not in some created or artificial system of thought but in the perfect justice of uncreated *ius*. The reference to justice as a habit is not his final word on the topic; in fact Wyclif believes such a description to be inadequate in reference to true justice. So his first description is of a rationally formulable created state of affairs commensurate with the *ius* of God’s will. Briefly, what is truly right or just in human affairs depends on what is divinely right or just. Beyond that, Wyclif’s intention is hard to discern.

The second description is quite different from the first; in this case *ius* is a lord’s power to use. This appears to correspond to the Marsilian subjective right as being a power held by an individual and is evocative of the definitions

⁴³ *Summa Theologiae*, IIaIIae, 57, 2.

⁴⁴ *Ibid.*, 57, 4: “Ad secundum dicendum quod filius, inquantum filius est aliquid patris; et similiter servus, inquantum servus est aliquid domini; uterque tamen, prout consideratur ut quidam homo, est aliquid secundum se subsistens ab aliis distinctum. Et ideo inquantum uterque est homo, aliquo modo ad eos est iustitia; et propter hoc etiam aliquae leges dantur de his quae sunt patris ad filium, vel domini ad servum; sed inquantum uterque est aliquid alterius, secundum hoc deficit ibi perfecta ratio iusti vel iuris.”

which Tierney reports of the canonists.⁴⁵ In this case individuals holding *dominium* can choose to use that over which they exercise *dominium*. There are no strictures: Wyclif does not add, “according to the established laws of use regulating such *dominium*,” nor does he say “in accordance with God’s will.” But he does restrict it to people who are lords, which is no longer a universal condition, given the Fall. Wyclif believed that humans were created with a natural *dominium*, a non-proprietary relation in which everyone could use what they needed of creation; but the Fall effectively ended this state.⁴⁶

Since anyone might be a lord with Grace, however, we cannot be satisfied that this is evidence for the absence of a subjective right. For now it is enough to note how the second description of *ius* implicitly refers to property ownership, or *proprietas* in *dominium*, and that this description could conceivably be understood as a kind of subjective right. Since Adam’s fall what has been needed to have this power has been Grace; and since Wyclif devotes much more attention to Grace as the primary foundation for *dominium*, we cannot conclude that he has erected his *dominium* theory on the basis of subjective rights.

Christ’s redemption allowed for the reintroduction of natural *dominium* into the world, but only the Grace-favored can now claim it.⁴⁷ Wyclif identifies this class with the Christian church and argues that the clergy’s propensity to private ownership has done great violence to Christ’s redemption.⁴⁸ Natural *dominium* is recoverable in apostolic poverty, and the Church must recover itself therein.⁴⁹ The only people capable of divesting the Church of wealth without incurring blame are the Grace-favored, those whom the divine will has ordained must act as the Church’s stewards. But if the Grace-favored are, as a class, natural lords who should be free of private ownership, Wyclif appears at cross purposes—who else is qualified to act?

Wyclif’s arguments in favor of the idea that some of the Grace-favored natural lords must set aside their restored birthright to take on the burden of civil *dominium* and reform the Church, while comprehensible in terms of his description of *ius*, exceed the scope of this discussion. For now it is enough to note that the second description of *ius* implicitly refers to property ownership, or the *proprietas* in *dominium*, and that this description could conceivably have been classifiable as a subjective right, had Adam not sinned. Wyclif takes no notice of this possibility in *De Mandatis Divinis* nor in *De Statu Innocencie* or *De Civili Dominio*, indicating that he either had not known of subjective rights, or that he was indifferent to them.

⁴⁵ See Tierney, “Origins of Natural Rights Language,” 629-38.

⁴⁶ See esp. *De Statu Innocencie*, III, 491.15-18.

⁴⁷ *DCD*, I, ix, 62.9-13.

⁴⁸ *DCD*, III, i-xi.

⁴⁹ *Ibid.*, xiii.

The next step is to explain how properly to use the term *ius*, which he does in chapter 3 of *De Mandatis Divinis*. Here he takes the distinction between uncreated and created right of chapter 1 and provides the basis for the doctrine of Grace-founded *dominium* by showing all conceptions of created right to be reliant on uncreated right. He begins by making use of the distinction between *ius in re* and *ius ad rem*, asserting the canonists' dictum that "it is impossible to have a right to a thing unless you already have a right in a thing."⁵⁰ All rational creatures can only have things by right and title through God's willing, the most powerful right. "If the giving of a temporal lord makes the receiver have the right [to the gift] from the giver, how much greater is the giving of the Lord of lords...."⁵¹

This remark about a lord's giving is a reference to Wyclif's discussion of the directive force of God's giving and of its necessity for all created acts of giving in *De Dominio* III, chapters 1 and 2.⁵² God's act of giving takes nothing from His own *dominium* and is the only means by which any created being is able to have existence. If this is the case with existence, it must be with any right a created being might have to use or exercise *dominium* over another; so in order for someone to have a right to use or *dominium*, they must first have been given this use or *dominium* by God. Wyclif likens this reliance of human use and *dominium* upon the divine giving to the relation of steward to master. "Just as the steward of a temporal lord who distributes from his lord the proper gifts of *dominium* does not give them of himself, but dispenses them [on behalf of his master], so it is with the giving of any creature."⁵³

This reference allows him to distinguish *ius* from *dominium* by claiming that *ius* causally precedes *dominium*; one cannot have *dominium* over something without first having a *ius in re*. What of the possibility that this would preclude any creature from either acquiring or destroying their right, since their having the right is eternally established in the divine will? Wyclif assumes that his readers are familiar with his discussion of the non-deterministic nature of God's perfect knowing in *De Dominio Divino*, I, chapters 14-19.⁵⁴ There, his distinction between absolute necessity, truths which cannot not be and necessity *ex suppositione*, truths having an eternal cause from which their temporal being flows formally, allows Wyclif to hold that God's knowing and willing is

⁵⁰ *DMD*, III, 15.20-23: "[I]mpossibile est tamen aliquem habere ius ad rem, nisi habuerit ius in re pro suo tempore et econtra."

⁵¹ *Ibid.*, 16.1-3 "Si enim donacio domini temporalis facit ius donatorio ad donatum, quanto magis donacio domini dominorum...."

⁵² See esp. *DD*, III, I, 199.19.

⁵³ *Ibid.*, III, I, 206.7: "Sicut ergo dispensator terreni domini manualiter tradendo dominia domini donantis proprie non donat ea tam proprie, sed dispensat; sic est de donacione cuiuslibet creature."

⁵⁴ *Ibid.*, I, xiv-xix, 115-72.

necessary *ex suppositione* and so not fatally deterministic.⁵⁵ So Wyclif concludes that people can deserve through Grace just use of possessions, and power to that use, both of which differ from *dominium*.⁵⁶ Not that Wyclif is suggesting that people cannot deserve *dominium* through Grace; his desire is to show how *ius* and *dominium* are distinct, and here he has shown that people can merit non-dominative rights to things through God's having given them rights in things.

He notes that he has made use of three senses of the term *ius* in the context of this discussion.

Three kinds of right are ordained essentially: the right which is divine willing, the right which is the power over the usable, and the right which is the use. The second of these cannot exist unless the first precedes it eternally, nor can the third exist unless the second precedes it in time or in nature.⁵⁷

This is a reordering of the three senses of *ius*; now that we are clear about their applicability, he appears to be saying, we can arrange them properly. Here Wyclif distinguishes between the ability to use or forbear from using an object and the actual use of the object in referring to the right which is the power over the usable and the right which is the use. It is not likely that Wyclif had this distinction in mind when he listed the uses of *ius* in Chapter 1, for both of the first two senses in the first description are formulated to allow distinguishing between potential and actual use. Still, the second sense in the earlier list looks like "power over the usable," and "use" in this section might conceivably be what Wyclif had in mind by "justly exercising truth."

At this point Wyclif refers to any sort of *ius* that is not either uncreated *ius in re* or *ius ad rem* as mere pretenses, and he compares these supposed human rights to true, uncreated rights as analogous to the difference between possession of something by *dominium* and possession by use. It is easy to say that one possesses something without being specific as to what grounds allow the possession. One can justly point to a thing and say, "That is mine!" without anyone asking whether the speaker is owning or renting (enjoying the use of) it. But such customary linguistic usage obscures the nature of things. If someone has

⁵⁵ *Ibid.*, 115-25; also *Tractatus de Universalibus*, xiv, 54ff. See also Anthony Kenny, "Realism and Determinism in Early Wyclif," ed. Anne Hudson, *Studies in Church History*, 5 (Oxford, 1987), 165-78.

⁵⁶ *DMD*, iii, p.16.20-24.

⁵⁷ *Ibid.*, 16.24-28: "Patet etiam quod ista tria iura essentialiter ordinata sunt; ius quod est volicio divina, ius quod est potestas ad usibile, et ius quod est usus; sic quod secundum non potest esse, nisi primum eternaliter precesserit, nec tertium potest esse, nisi secundum precesserit tempore vel natura."

the right to a thing, he has it because God wills it, which cannot be controverted; likewise, if someone possesses a thing by *dominium*, he cannot give it up or have it rightfully taken away.⁵⁸

Consequently, all human legislation and jurisdiction must be conducted by people with an understanding of uncreated *ius*. Philosophers who rely on human reason unguided by Scripture cannot be expected to point to just society, and when scriptural guidance is abandoned, iniquity is the only possible result.⁵⁹ Those legislators who strive to incorporate God's will in their work require Grace because God must will that they succeed before they do. From here Wyclif's analysis of just human jurisdiction in *De Civili Dominio* and *De Officio Regis* begins.

Having shown the causal necessity of uncreated *iura* for just law-making, we should consider whether Wyclif means that just legislators can create laws that would themselves establish just created (objective) *iura*. That is, if uncreated right is necessary for the law-makers to legislate justly, do the created objective rights that result from their legislation have any claim to the justice of that legislation? Given that created rights based in human legislation unfounded in Scripture cannot be just, can any created right be just?⁶⁰

So long as created *ius* is regulated according to uncreated *ius* it is just, and an expression of the divine will. But if the necessary condition for justice in created *ius* is founded in uncreated *ius*, who is capable of establishing whether a given created *ius* is so founded? As already indicated, only the Grace-favored are, which suggests that a legislator's subjects who are not Grace-favored cannot realize the justice of their legislator's actions. So government by consensus would be foreign to Wyclif.⁶¹ But it would also suggest that anybody who is Grace-favored could assess the quality of the ruler's legislation. Wyclif would not deny this but argues instead that the Grace-favored should be concerned more with spiritual perfection than with the mundane concerns of civil legislation.⁶² Thus the Grace-favored legislator would be taking on a grievously oppressive burden by becoming a civil lord. This sacrifice reflects the servile nature of civil *dominium*, for the Grace-favored civil lord is really the steward of the divine Lord, as the *ius* resultant from his legislation is really a created participation in uncreated *ius*.

Wyclif notes that created *ius* has proven to be divisible by those not aware of the priority of uncreated *ius*, and he ends his discussion of rights with a brief summary of these divisions. This summary is in concert with the medieval Aristotelian division of created civil power, and the unwary reader might pre-

⁵⁸ *Ibid.*, 18.1-16.

⁵⁹ *Ibid.*, 22.1.

⁶⁰ *Ibid.*, 23.5.

⁶¹ *DCD*, I, xviii, 130.6-14.

⁶² *DOR*, VI, 133.16-30.

sume Wyclif to be grounded in Aristotle. This is easily dispelled by recalling Wyclif's belief that the Aristotelian view of justice as moral virtue does not sufficiently account for the directive power of uncreated *ius*.

One can explain created *ius* in two ways, he begins; the first is by dividing up sorts of *ius* according to the different nations in which they appear. Some rights are Roman, while others are English. But this confusion of variation and contrast is of no use to theorists.⁶³ Better is a description based in the rhythms of created nature. At its most basic, created *ius* governs the proliferation and structural development of everything in creation. Among humans, this underlying *ius* is called *ius gentium*, whereby all agree that it is right for people to live virtuously, to marry for procreation, and to live socially to maximize the rationally comprehensible order.⁶⁴

Less generally defined is the final species of created *ius*, whereby human reason regulates societies in conformity with the primary right called domestic, civil or political right. In some cases, he notes, its ideal development is aristocracy, while among others it is democracy, "according to the virtues, the riches, or according to political nobility or the election of the people...."⁶⁵ Philosophers can divide the political laws that come from these varying methods of rule as being common and public, or private laws. Of these divisions Wyclif has nothing more to say, referring his reader to the third book of Aristotle's *Politics*.

We have already seen how Wyclif rejects Aristotle's lack of foundation in uncreated *ius*, and so need only note this description's assumption of reliance of such an arrangement upon the uncreated *ius* of God's will. Wyclif makes no significant use of this potential development of *ius* into aristocracy or democracy in any later works, framing his description of just human government in monarchic terms without reference to constitutions organized according to the needs of the governed. Why, then, this reference to the types of government described in the *Politics*? It is possible that he had not yet developed his monarchism when he wrote *De Mandatis Divinis*, but it is more likely that he felt the need to avoid framing the discussion of the decalogue that was to follow in exclusively monarchist terms, given the relatively late development of kingship in the history of Israel.

Wyclif's view of rights, then, is of a created, objective right wholly reliant upon the *ius* of divine will; an individual has a *ius* to *usus* or *dominium* if and only if God wills that the individual have it. Artificed systems of the assignment of rights not founded in God's will as revealed in Scripture are fictions in which true *ius* appears only accidentally. His formulation of this position is

⁶³ *DMD*, III, 23.23-27.

⁶⁴ *Ibid.*, 24.1-17.

⁶⁵ *Ibid.*, II.20-23.

sufficiently complex as to admit of a distinction between *ius in re* and *ius ad rem* and to hold its own in contrast with a more conventional framework.

III. Toleration in Wyclif's Political Thought

Wyclif's vision of the harmonious coexistence of private property owners with the apostolically poor indicates a willingness to tolerate the institution of private property ownership, despite its roots in human sin. This alone can be argued to indicate a vein of progressivity in Wyclif's approach, since, unlike many of his contemporaries who accepted Aristotle's view of private property as natural and rational, he felt it to be neither natural nor rational. Several ideas follow from this that suggest a kinship with later social reform movements. Among these are, first, the moral restraint that characterizes the Grace-favored civil lord's rule; second, Wyclif's rejection of biological hereditary succession as a means by which *dominium* (civil ownership and rule) is conferred upon the civil lord; third, his belief that a lord's subjects ought to be free to reprove their lord; and finally, Wyclif's distrust of excessive reliance on a multitude of laws, courts, and lawyers.

An acceptance of civil ownership upon which the secular state is erected indicates Wyclif's readiness to provide for the ugly realities of postlapsarian life. Not only ought the Grace-favored civil lord avoid harming property owners, Wyclif counsels the civil lord to protect and nourish the commonwealth. This protection might involve severe measures; when invasion threatens the well-being of the kingdom, for example, the king ought do what he can to protect all citizens, even if this involves dismantling cathedrals or churches to use the stones for battlements.⁶⁶ To insure a healthy economy and the likelihood of fair financial transactions, the king should regulate the kingdom's merchants to prevent escalation of interest rates.⁶⁷ Further, the king's regulation must prevent the lesser property owners and non-apostolic users from indigency and protect debtors from unreasonable punishment for failure to repay because of fire, shipwreck, or robbery.⁶⁸

The moral purity of the Grace-favored civil lord is embodied in the lord's *caritas*, which is expressed as love for his subjects; the selfishness of the domineering owner is foreign to just civil *dominium*.⁶⁹ A chief characteristic of this *caritas* is the tendency for the civil lord to act towards his subjects as if they were his masters and to govern according to the needs of the governed, not

⁶⁶ *DOR*, viii, 185.9-21.

⁶⁷ *DCD*, III, xvi, 311-313.

⁶⁸ *DOR*, v, 96.16-27; *De Ecclesia*, xi, 243.11-21.

⁶⁹ *DCD*, I, xxiii, 227-231; xxxvi, 259.

those of the governor.⁷⁰ Grace will allow the civil lord to serve as a moral exemplar for his kingdom, a standard according to which the subjects ought model their own actions.⁷¹ So long as the king's life is exemplary, Wyclif believes, the subjects will know that they are being ruled by the Grace-favored, and will be inclined to live in imitation of their lord; but should the king serve as a model of depravity, the entire kingdom must surely be mired in depravity as well.⁷²

Chief among the means by which a kingdom deteriorates is the institution of hereditary succession. God can never countenance the inheritance of civil ownership because the concept of Grace-favored *dominium* requires that civil owners merit their office through purity of will. This line of argument is particularly remarkable given its fourteenth-century context. Wyclif argues not only that monarchy should find a non-dynastic way to pass on its responsibilities, but also that there should be an end to perpetual grants, through which a king rewards a favored servant with a gift of land or service to be passed on to the servant's children in perpetuity, and of hereditary servitude, where a slave's children are themselves forced into slavery.⁷³ What this amounts to is a rejection of the feudal apparatus that had come to characterize medieval England.

How to provide for the right person being made king, if not through dynastic inheritance? Certainly not through popular elections, Wyclif argues, because the sins of the electors are likely to affect the outcome of the election, despite the best of intentions. Neither inheritance nor election are reliable, because for every Solomon who has inherited his throne there is a Nero, and for every Lincoln who has been popularly elected there has been a Hitler. "Thus since acquiring the title itself does not suffice, but clearly needs a title of charity superadded, it is clear also that neither hereditary succession nor popular election suffice in themselves either."⁷⁴

Better to be more careful about the relation of filiation, for the problem with inheritance is that one's natural son might not be Grace-favored. Filiation through instruction in Christ is more likely to provide the proper means by which an appropriate heir to the kingship may be selected. "The title of *dominium* by law of heredity in Christ is naturally more prior and continually more requisite after the Fall than any other mode of *dominium*."⁷⁵ If the heir to

⁷⁰ *Ibid.*, I, xxxiv, 243.13-33.

⁷¹ *Ibid.*, I, xx; xxvi; *DOR*, iii, 46-49; iv, 80.

⁷² *Ibid.*, iii, 48; Wyclif's reference here is to Proverbs 1:7.

⁷³ *DCD*, I, xxix-xxxv.

⁷⁴ *Ibid.*, I, xxxix, 212.20-23: "Unde, sicut titulus acquirendi non per se sufficit ... sed oportet precipue superaddere titulum caritatis, sic indubie nec successio hereditaria nec popularis electio per se sufficit."

⁷⁵ *Ibid.*, I, xxx, 216.12-16: "Sic titulus dominandi ex iure hereditario Christi per gratiam est prius naturaliter et essentialiter requisitum post lapsum ad hoc quod quis quomodolibet dominetur."

the throne is to be the king's son through discipleship in Christ, the entire class of the apostolically poor are potential aspirants to the duty of civil *dominium*; and the present Grace-favored king is free to make a careful selection among the most deserving of these.

Wyclif believes the civil institution of servitude, in which people are born into subjection to a lord, to be a real evil. In his view, just civil *dominium* is stewardship on behalf of the divine Lord, and not mastery, and to suppose that anything other than one's having been favored by Grace can determine just *dominium* is folly. True servitude, he argues, is subjection to material needs; servants or subjects with *caritas* have true, natural mastery over their civil lords when the lords are in thrall of material wealth.⁷⁶ Likewise, true mastery involves an attitude of love-founded concern for one's subjects, so Wyclif's picture of just civil *dominium* allows more benefits to the subject than to the lord. When a lord ceases to devote his concerns to those of his subject, the mastery relation ends; the lord is no longer a lord, and the subject no longer subject, and no human ordinance can prevent this from occurring.⁷⁷ As with the inheritance of civil *dominium* in general, cases in which a Grace-less lord inherits the service of subjects can never be just. Thus, Wyclif's reasoning serves to indict every lord-subject relation not characterized by a loving reciprocity as having no place in a just society.

Wyclif takes a similar approach regarding tyranny. Throughout *De Civili Dominio* and *De Officio Regis* he advises those subject to a tyrant to bear up obediently under what might well be God's cleansing scourge. "For the Savior obeyed the corporeal bidding of Herod, Pilate, and priestly rulers, which otherwise he could easily have resisted; all Christ's actions are our instructions, so we should obey tyrants...."⁷⁸ Wyclif's rather terrifying reasons for God's allowance of earthly tyranny are that tyrants serve to punish the sin of abusing God's favor, to provide discipline for the just, and to instruct the faithful that no civil office ought to be used to attain God's favor.⁷⁹ While these admittedly dissatisfying reasons recur throughout Wyclif's discourse on the nature of civil government, they are not all that he has to say on the topic.

Implicit to Wyclif's redefinition of lord and subject as reciprocally related to one another is the notion that those who serve a lord have a degree of mastery over their lord. While this idea is most evident in Wyclif's arguments in favor of laymen reproving tyrannous priests, it holds true for secular tyrants as well. Servants who know the good better than their masters can rightfully disobey an evil command, he explains; in fact, when fulfilling the evil command would be unjust, the righteous subject's duty is to refuse to obey or to dis-

⁷⁶ DCD, I, xxxiii, 234-37.

⁷⁷ *Ibid.*, I, xxxiv, 243.12-244.2. See also DOR, iv, 79.28-80.3.

⁷⁸ DCD, I, xxviii, 199.9-14.

⁷⁹ *Ibid.*, I, vi, 42-46. See also DOR, i, 17.

obey.⁸⁰ “If, through the absence of temporal cooperation [one] could destroy the power and abuse of the tyrant, we should withdraw our cooperation from him.”⁸¹ There are even extreme cases, Wyclif admits, where the service due the especially heinous tyrant is his murder; but he suggests this more to show how different are the types of service than to incite anyone to tyrannicide.⁸²

Finally, Wyclif is wary of legislation and the courts. This does not mean that he distrusts law, for all human law that implements divine law is by definition just. But human laws that only complicate people’s lives or provide for the accumulation of wealth at the expense of others are artifices that do not participate in the justice of God’s law. Wyclif advises the just civil lord to avoid making too many laws, despite their apparent convenience, for they contribute more to confusion than to order: “... such a multitude of laws would be burdensome and useless in rule.”⁸³

One might expect Wyclif to endorse creating civil laws that enforce Christian practices. He distinguishes between just civil laws that implement divine justice and those that enforce Christian *caritas* throughout the land, recognizing that one cannot expect a law to compel one to do what Grace alone makes possible. Rather than force people to give alms to the poor, for example, the civil lord should take this duty on himself, for such a deed can really only be possible for the *caritas*-infused heart. While no civil court can rightfully enforce such charity, nor can it impede such acts.⁸⁴

De Officio Regis and *De Civili Dominio* contain many of the elements of Wyclif’s reformatory ecclesiology, including his arguments in favor of the complete divestment of all feudal holdings from any priest, his belief that bishops and popes must have absolutely no political power, his indictment of the corruption of the papal office, his arguments for the elimination of excommunication as a means by which church-members can be controlled, and his well-known belief that all Christians must have access to and understanding of the Scriptures. We can only make passing reference to these ideas in our brief sketch of the aspects of these first treatises of his *Summa Theologie* indicating Wyclif’s progressivity.

Wyclif’s political thought, with its foundation in the traditional notion of the objective *ius*, is certainly not comparable to Ockham’s or Marsilius’s regarding the rights one might expect by virtue of being a human. But it would be premature to relegate it to the Museum of Philosophical Curiosities, for it shows

⁸⁰ *DOR*, iv, 82.

⁸¹ *DCD*, I, xxviii, 201.30-33: “Verumtamen, si esset verisimile homini per subtractiones temporalis iuvaminis destruere potentatus tyrannidem vel abusum, debet ea intencione subtrahere.”

⁸² *DOR*, viii, 201.15-19.

⁸³ *Ibid.*, iii, 56.5-18.

⁸⁴ *DCD*, III, xvi, 303.

a tendency towards the kind of progressivity that characterizes political thought reliant on subjective right. It would be better to conclude that the absence of a theory of subjective right in a medieval political thinker does not necessarily indicate an approach averse to the modern way; in Wyclif's case, a theory of objective *ius* provides a foundation for a startlingly atypical medieval political vision.

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